

TOWARD EQUALITY FOR OHIO MEN AND WOMEN: THE ERA AND LEGISLATIVE RESPONSE

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The legal status of women has long been a recognized problem. In the mid-nineteenth century the attention of feminists was focused on the disadvantaged legal status of married women in their inability to hold property and establish a legal identity. After the Civil War the emphasis moved to suffrage and the plight of the exploited female worker. In the 1960's, after a period of dormancy, the feminist movement in law rallied around the standard of the Equal Rights Amendment (ERA), which has as its ambitious goal the elimination of sex discrimination in all areas of the law.

The ERA was approved by the United States Congress after extensive hearings, and the process of state ratification was then begun.¹ On February 7, 1974, the Ohio General Assembly ratified the proposed 27th amendment to the United States Constitution, becoming the 33rd state legislature to do so.² The amendment is as follows:

Section I. Equality of right under law shall not be denied or abridged by the United States or by any State on account of sex.

Section II. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section III. This amendment shall have effect two years after the date of ratification.³

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¹ Joint Resolution of March 22, 1972, 86 Stat. 1523. The United States Senate passed the ERA on March 22, 1972. 118 CONG. REC. 9598 (1972). The House of Representatives had passed it on October 12, 1971. 117 CONG. REC. 35815 (1971).

² 135 S. JOUR. 1138 (1974). The thirty-two states that ratified the ERA prior to Ohio are Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. North Dakota ratified after Ohio. Thirty-eight states are needed for national ratification.

³ H.R. JOUR. RES. 208, 92d Cong., 2d Sess. (1974). The purpose of the amendment is to make sex an impermissible factor in determining the legal rights of a citizen.

[U]nder the Equal Rights Amendment the existence of . . . a characteristic or trait to a greater degree in one sex does not justify classification by sex rather than by the particular characteristic or trait. . . . [T]he law may make different rules for some people than for others on the basis of the activity they are engaged in or the function they perform. But the fact that in our present society members of one sex

In Ohio the ERA was considered in the first six months of 1973. The Governor and the Attorney General joined in support for ratification. After some difficulty in a Senate committee, the ERA was ratified on February 7, 1974.⁴

Shortly after ratification in Ohio, the Governor and the Attorney General decided to push for implementation of the ERA principles in Ohio prior to national ratification. As part of this effort, they formed a task force composed of twelve men and thirteen women, who came from a variety of backgrounds. The Task Force met for nine months and considered various portions of the Ohio Revised Code.⁵ They also considered various courses of affirmative action which, though not mandated by the ERA, would in the opinion of the Task Force remove gender-linked barriers and broaden lifestyle options for Ohioans.⁶ At the conclusion of the Task Force's work, the

are more likely to be found in a particular activity or to perform a particular function does not allow the law to fix legal rights by virtue of membership in that sex. In short, sex is a prohibited classification.

Brown, Emerson, Falk, and Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871, 889 (1971) [hereinafter cited as BROWN]. (This article was incorporated into the legislative history of the amendment at 118 CONG. REC. 4250 (1972)). Generally, the Amendment must be applied comprehensively with no exceptions. The ERA does not permit administrative efficiency to be used as an exception, but does allow differentiation between rights and responsibilities based on unique physical characteristics and requirements of privacy; if the law differentiates according to characteristics exclusively unique to women or exclusively unique to men, it does not violate the ERA. *See id.* at 893; Comment, *The Equal Rights Amendment: Its Meaning and Its Impact on Missouri Law*, 39 MO. L. REV. 553 (1974). Since the problem would arise only in the limited situations in which physical characteristics are unique to one sex, the legislature would be limited to those narrow areas of the law in which sex would play a role.

⁴ BALDWIN'S LEGIS. SERV., *The Boxscore* 20 (1974).

⁵ The Task Force was provided with an "OBAR" Lexis computer to study sections of the Ohio Revised Code that might require revision to comply with the ERA. The computer study was based on the use of 22 sex-linked search words like "male", "female", "father", or "mother". The computer provided a list of over nine hundred sections containing these words. The sections were then reviewed to determine whether they contained any inequities based on sex.

The majority of the sections cited by the computer were deleted from the study at this point. Some sections did not refer to humans. Other sections deleted used two or more sex-specific words in conjunction, such as "mother or father" or "men and women", to obtain a sexually neutral result. A third group of statutes used sex-specific words in traditionally generic senses, such as reference to "drugs harmful to man" or to "man-hours" of labor. This third group is sex-neutral, in effect, under the rules of construction set forth in OHIO REVISED CODE § 1.43 (Page Supp. 1975). The remaining sections were referred to the Task Force for consideration.

⁶ *See* REPORT OF THE OHIO TASK FORCE FOR THE IMPLEMENTATION OF THE EQUAL RIGHTS AMENDMENT vi-vii (1975) [hereinafter cited as TASK FORCE REPORT]. It made several recommendations for legislation, including the provision of child care services and the decriminalization of prostitution.

These recommendations have become the basis of attack by ERA opponents who claim the recommendations are mandated by ratification of the ERA. PHYLLIS SCHAFLY REPORT,

Ohio Attorney General's Office set up an ERA project to coordinate efforts, to determine priorities, and to draft and support legislation implementing the Task Force recommendations.

Although the ERA itself has not yet become part of the United States Constitution, it and the movement that formed around it has had a significant effect on the legal status of Ohio men and women. The impetus of the ERA ratification efforts alone has led the last two legislatures to focus on several areas of the law and make significant progress in dealing with sex discrimination. This article will discuss a few of those areas.

I. SEX DISCRIMINATION IN EMPLOYMENT, PUBLIC ACCOMMODATIONS, AND HOUSING

In 1974 the General Assembly amended chapter 4112 of the Revised Code,⁷ which prohibits discrimination in housing, public accommodations, and employment on the basis of race, color, religion, national origin, or ancestry, to include a similar prohibition against sex discrimination by an employer in hiring, promotions, or the settling of terms and conditions of employment.⁸ The Act also prohibits many practices of employment agencies, labor unions, apprentice training programs, and job seekers that encourage or perpetuate sex discrimination in employment.⁹ It also made it unlawful for any proprietor, employee, or manager in a place of public accommodation

Vol. 9, No. 5, p. 1; *Two Anti-ERA Women Displeased*, New Hampshire Sunday News, Jan. 25, 1976. The ERA does not mandate that the state consider, as a policy matter, whether to expend state funds in making child care more widely available to Ohio citizens. The ERA would compel that any state government making a decision to increase child care facilities must do so without regard to sex, making the facilities available to both mothers and fathers and to male and female enrollees.

Similarly, the Task Force recommendation that prostitution be decriminalized is not mandated by the ERA: "Although the ERA does not require a repeal of a neutrally worded prostitution law which is fairly enforced, it does require careful examination of any law which is disproportionately enforced against women." TASK FORCE REPORT, *supra* at 43. The Ohio prostitution statute is sex-neutral and can be applied to both prostitute and customer. However, the female prostitute is punished more frequently and harshly than a male customer. The language of the statute withstands an ERA analysis, but the enforcement practices may not withstand a "strict scrutiny" challenge.

The decriminalization recommendation was based on the Task Force's determination that consensual behavior of adults that does not harm others should not be infringed without a compelling state interest. In the opinion of the Task Force, no such interest is apparent in the area of prostitution. *Id.* at 43.

⁷ Am. Sub. H.B. 610, codified at OHIO REV. CODE ANN. ch. 4112 (1973), as amended (Page Supp. 1975).

⁸ OHIO REV. CODE ANN. § 4112.02(A) (Page Supp. 1975). For a further explanation of this section's meaning, see the EEOC Guidelines on Sex Discrimination in Employment, 29 C.F.R. § 1604 (1975), which interpret the substantially identical federal law.

⁹ OHIO REV. CODE ANN. § 4112.02(B)-(F) (Page Supp. 1975).

to deny any person the full advantages of the accommodations, facilities, and privileges of the facility because of sex.¹⁰ Discrimination in housing, including sales, rentals, and financing, is also banned.¹¹

The inclusion of the prohibition against sex discrimination also effected a repeal of other sections of the Ohio Revised Code which were in conflict with the mandate of amended chapter 4112. In *Jones Metal Products Co. v. Walker*,¹² the Ohio Supreme Court held that the "female protective labor laws" were in conflict with the anti-sex discrimination provisions of Title VII (which are nearly identical to the Ohio provisions). These protective laws prohibited women from working in certain professions,¹³ or from being employed in jobs that require heavy lifting or overtime work,¹⁴ and required employers to provide certain benefits to female employees.¹⁵ The court indicated that these sections have been used to discriminate against women by restricting their employment opportunities.¹⁶ They also had a discriminatory impact on male employees who were not provided with equal benefits.¹⁷ The new amendments provide that laws inconsistent with any provision of chapter 4112 are rendered inapplicable by that chapter.¹⁸ Therefore, the inclusion of the sex discrimination prohibition in chapter 4112 makes the "female protective labor laws" inapplicable to all employers covered by that chapter, *i.e.* those with four or more employees.

The prohibitions of chapter 4112 concerning sex discrimination are very similar to the federal anti-discrimination laws in the areas of employment and housing. However, the federal agencies enforcing these provisions are required to refer allegations of discrimination to the state agency and to defer any action on them for a period of 30

¹⁰ *Id.* § 4112.02(G).

¹¹ *Id.* § 4112.02(H).

¹² 29 Ohio St. 2d 173, 281 N.E.2d 1 (1972).

¹³ OHIO REV. CODE ANN. § 4107.43 (Page 1973) prohibited the employment of women in occupations including crossing watchman, gas or electric meter reader, in delivery service on motor vehicles over one ton capacity, in baggage handling, freight handling, or mining.

¹⁴ *Id.* This section prohibited the employment of women in occupations requiring frequent or repeated lifting of weights over 25 pounds. *Id.* § 4107.46 limited the employment of women for more than 48 hours a week or eight hours a day, or more than six days a week, subject to exceptions.

¹⁵ *Id.* § 4107.42 required employers to provide female workers with seats for use when not actively engaged in work, a lunch room and a 30-minute lunch break. *Id.* § 4107.46 required that a meal break be provided after five hours of work.

¹⁶ 29 Ohio St. 2d at 177-78, 281 N.E.2d at 6. *See also* EEOC Guidelines to Sex Discrimination in Employment, 29 C.F.R. § 1604.2 (1975).

¹⁷ *See* EEOC Guidelines to Sex Discrimination in Employment, 29 C.F.R. § 1604.2(b)(4) (1975).

¹⁸ OHIO REV. CODE ANN. § 4112.08 (Page Supp. 1975).

or 60 days.¹⁹ This deferral procedure allows the state rather than the federal government the first opportunity to remedy the situation.²⁰

The creation of a state remedy for sex discrimination makes the enforcement agencies more accessible to Ohio citizens wishing to obtain information or to file a complaint.²¹ Potential complainants may also prefer the state procedure because the Ohio Civil Rights Commission's administrative procedure eliminates the need for retaining private counsel in the vast majority of cases.²²

The prohibition of sex discrimination under Title VII of the 1964 Civil Rights Act was applicable only to employers with more than 15 employees.²³ Thus prior to House Bill 610 employees of small business were not covered. However, under the new enactment, protection is afforded to all employees working for firms with four or more employees.²⁴

The amendment also afforded victims of sex discrimination in public accommodations a legal remedy for the first time.²⁵

Since January 1, 1974, when the new law took effect, sex discrimination has become the second most frequently complained of form of discrimination filed with the Ohio Civil Rights Commission.²⁶ Complaints have been filed by both men and women and have alleged discrimination in all three areas: employment, public accommodation, and housing.²⁷

¹⁹ The prohibition against sex discrimination in housing requires a 30-day deferral period. 42 U.S.C. § 2000a-3c (1970). The prohibition against employment discrimination requires a 60-day deferral period. *Id.* § 2000e-5c.

²⁰ For further discussion of the advantages of this procedure, see Murray & Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965); *State Legislative Response to the Federal Civil Rights Act: A Proposal*, 9 UTAH L. REV. 434 (1964); THE UNIFORM ANTI-DISCRIMINATION ACT, Comment to § 301 (1966).

²¹ The Ohio Civil Rights Commission has six regional offices located in Cleveland, Columbus, Toledo, Cincinnati, Akron, and Dayton.

²² OHIO REV. CODE ANN. § 4112.05(B) (Page Supp. 1975) provides that the Attorney General shall present the evidence in support of the complaint at the administrative hearing.

²³ 42 U.S.C. § 2000e(b) (Supp. IV, 1974).

²⁴ OHIO REV. CODE ANN. § 4112.01(B) (Page Supp. 1975).

²⁵ 42 U.S.C. § 2000a (1970), which prohibits racial, color, national origin, and religious discrimination, does not include a prohibition against sex discrimination. The courts have declined to extend its coverage to include this type of discrimination. *Seidenberg v. McSorley's Old Ale House, Inc.*, 308 F. Supp. 1253 (S.D. N.Y. 1969); *Decrow v. Hotel Syracuse Corp.*, 288 F. Supp. 530 (N.D. N.Y. 1968).

²⁶ Only allegations of race discrimination are more common. From December 1973 to June 1974, 680 allegations of sex discrimination were filed with the Ohio Civil Rights Commission. In fiscal year 1974-75, 1548 of the 5594 complaints filed were on the basis of sex. From July 1975 to December 1975, 682 of the 2500 complaints were on that basis.

²⁷ Approximately 95 percent of the sex allegations are based on employment discrimination, three percent on public accommodation discrimination, and 1.6 percent on housing discrimination.

II. DIVORCE REFORM

In June of 1974 the Ohio legislature enacted the first major revision in Ohio divorce law in the past century by passing House Bill 233.²⁸ The most significant changes effected by the Divorce Reform Act concern the grounds for and defenses to divorce. It abolished the defense of recrimination, which required the party seeking divorce to be free of fault, and also the defense of condonation, which inferred forgiveness of prior misconduct from reconciliation of the parties and barred use of that misconduct as evidence.²⁹ The Act also established two forms of no-fault divorce. A divorce may now be obtained when the parties have lived apart for two years without cohabitation or interruption.³⁰ The second no-fault form, dissolution of marriage, can be obtained when the parties agree to the divorce, to a division of property, and, if there are minor children of the marriage, to the terms of custody, visitation rights, child support, and alimony.³¹

The Divorce Reform Act also made important revisions in the areas of alimony, custody of minor children, child support, and reconciliation.³² The bill expands the specific criteria for determining whether alimony is necessary, the amount, and the manner of payment.³³ The previous law allowed the court to order alimony as it deemed reasonable to either party; in determining the reasonableness of an award, the court was required to consider the property each brought to the marriage, their earning capacities, and the value of the real and personal property owned by each at the time of the di-

²⁸ Am. Sub. H.B. 233, 110th Gen. Ass'y. For a comprehensive history of divorce law in Ohio, see REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION PROGRAM PUBLICATION No. 89, DISSOLUTION OF MARRIAGE 1.01 (1974) [hereinafter cited as DISSOLUTION OF MARRIAGE].

²⁹ OHIO REV. CODE ANN. § 3105.10(B) (Page Supp. 1975). These defenses were derived from the common law. See, e.g., *Karpanty v. Karpanty*, 39 Ohio App. 194, 177 N.E. 521 (1926) (recrimination); *Opperman v. Opperman*, 77 Ohio App. 69, 65 N.E.2d 655 (1945) (recrimination); *Wilson v. Wilson*, 14 Ohio App. 2d 148, 237 N.E.2d 421 (1968) (condonation); *Huffine v. Huffine*, 36 Ohio Op. 56, 74 N.E.2d 764 (C.P. Van Wert Cty. 1974) (condonation).

³⁰ OHIO REV. CODE ANN. § 3105.63 (Page Supp. 1975). Four years separation is required if one party is confined to a mental hospital.

³¹ *Id.* § 3105.61.

³² The original bill also contained a requirement that a course on family living be a prerequisite for high school graduation. However, this provision was deleted prior to enactment. The Ohio ERA Task Force made a recommendation of a similar nature. TASK FORCE REPORT, *supra* note 6, at 8.

³³ OHIO REV. CODE ANN. § 3105.18 (Page Supp. 1975). Very few divorced women actually receive alimony. Even when they do receive an alimony award, it is extremely hard to enforce. See CITIZEN'S ADVISORY COUNCIL ON STATUS OF WOMEN, DEPARTMENT OF LABOR, THE EQUAL RIGHTS AMENDMENT AND ALIMONY AND CHILD SUPPORT LAWS (1972); Blank and Pone, *Enforcement of Interspousal Support Obligations: A Proposal*, 2 WOMEN'S RIGHTS L. REV., June 1975, at 17; Marvin A. Freeman, *Should Spousal Support Be Abolished?* 48 LOS ANGELES B. BULL. 236 (1973).

voiced.³⁴ The new law expands the criteria to be considered to eleven factors,³⁵ two of which are of special interest to women. One subsection provides that the court may consider whether custody of minor children of the marriage might render it inappropriate for the guardian to seek employment outside the home.³⁶ Although sex-neutral in form, this will primarily benefit mothers.³⁷ The other subsection requires the court to consider the contributions of the spouse as a homemaker.³⁸ This allows for a more equitable division of marital property by requiring the court to consider the contributions of the homemaking spouse to the financial success of the marriage,³⁹ a break from the long tradition of ignoring the economic value of homemaking services.⁴⁰

The statute is sex-neutral and, like its predecessor, provides either spouse with the opportunity for alimony.⁴¹ It is interesting to note that, while the factors listed are not all inclusive, the husband's primary obligation of support, codified in Revised Code § 3103.03,⁴² is not listed as one of the factors to be considered. A recent Ohio case construing child support provisions of this bill found the absence of such a provision significant and held that § 3103.03 will not be enforced by direct means during an ongoing marriage,⁴³ making this discriminatory provision inapplicable for all practical purposes.⁴⁴ The

³⁴ Former OHIO REV. CODE ANN. § 3105.18 (Page 1972).

³⁵ The factors to be considered are (1) the relative earning abilities of the parties, (2) their ages, physical and emotional conditions, (3) their retirement benefits, (4) their expectancies and inheritances, (5) the duration of the marriage, (6) the extent to which it would be inappropriate for the party to seek employment outside the home because he is custodian of the children, (7) the parties' standard of living during the marriage, (8) their education, (9) their assets and liabilities, (10) the property brought to the marriage, and (11) the contributions of a spouse as homemaker. OHIO REV. CODE ANN. § 3105.18(B) (Page Supp. 1975).

³⁶ *Id.* § 3105.18(B)(6).

³⁷ See DISSOLUTION OF MARRIAGE, *supra* note 28, at 4.06.

³⁸ OHIO REV. CODE ANN. § 3103.03 (Page Supp. 1975).

³⁹ See DISSOLUTION OF MARRIAGE, *supra* note 28, at 4.08-.09. See also UNIFORM MARRIAGE AND DIVORCE ACT § 308.

⁴⁰ See Krauskopf and Thomas, *Partnership Marriage: The Solution to an Ineffective and Inequitable Law of Support*, 35 OHIO STATE L.J. 558, 580-84 (1974).

⁴¹ See *Hickle v. Hickle*, 6 Ohio C.C.R. 490 (Cir. Ct. App. 1892).

⁴² OHIO REV. CODE ANN. § 3103.03 (Page Supp. 1975) provides in part: "The husband must support himself, his wife, and his children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able."

⁴³ *Hill v. Hill*, 40 Ohio App. 2d 1, 317 N.E.2d 250 (1973).

⁴⁴ Traditionally, courts have refused to order support in an ongoing marriage because of reluctance to become involved in the internal works of a marriage and fear that it would encourage divorce. See *McGuire v. McGuire*, 157 Neb. 226, 59 N.W.2d 336 (1953); L. KANOWITZ, *WOMEN AND THE LAW* 71 (1969); Krauskopf, *supra* note 40, at 563; Cozier, *Marital Support*, 15 B.U.L. REV. 28, 33 (1935). The Divorce Reform Act allows the court to award alimony while the parties are residing together. OHIO REV. CODE ANN. § 3105.17 (Page Supp. 1975). However, it is the intent of the Act's sponsors that this should be used only when divorce

Ohio spouse support laws, therefore, are in substantial compliance with the ERA.⁴⁵

The Divorce Reform Act also repealed Revised Code § 3103.02,⁴⁶ which provided that the husband was the head of the household and could choose any reasonable abode and manner of living, and required that the wife must conform to his decision. The failure of the wife to remain at her husband's abode could result in a finding of gross neglect of marital duty and could, in effect, create a ground for divorce.⁴⁷ This provision was objectionable for a number of reasons. It impeded a wife's ability to establish her own domicile during an ongoing marriage (although she could establish her own domicile for purposes of divorce jurisdiction and venue⁴⁸). The wife's inability to establish a separate domicile during marriage led to many hardships, including loss of in-state tuition status at state universities and difficulties with voter registration.⁴⁹ This section also reinforced the justification given by courts for their failure to accord the wife in an ongoing marriage a direct action for support against her husband for anything more than subsistence.⁵⁰ Finally, to the extent the statute codified social and religious traditions concerning family structure, this may have been an unconstitutional and inappropriate action for the state to take.⁵¹ The repeal of § 3103.02 must therefore be viewed as a positive step toward equality for marriage partners.

There has been some suggestion that § 3103.04,⁵² which sets forth more explicit criteria for the determination of custody, would preclude the application of a presumption that the mother was the natural, and therefore the best guardian of young children.⁵³ However,

is contemplated. See Norris, *Divorce Reform, Ohio Style*, 48 OHIO BAR 1031, 1035 (1974).

⁴⁵ The model act after which the Ohio revision was fashioned should be found to be in conformity with the ERA. Brown, *supra* note 3, at 952; TASK FORCE REPORT, *supra* note 6, at 4.

⁴⁶ Former OHIO REV. CODE ANN. § 3103.02 (Page 1972).

⁴⁷ See *Slusser v. Slusser*, 68 Ohio L. Abs. 7, 121 N.E.2d 317 (Ct. App. 1952).

⁴⁸ OHIO REV. CODE ANN. § 3105.04 (Page 1972).

⁴⁹ For further discussion of the domicile difficulties such statutes have caused, see L. KANOWITZ, *WOMEN AND THE LAW* 46 (1969); Brown, *supra* note 3, at 941.

⁵⁰ The husband, pursuant to such provisions, can determine the standard of living and is obligated to support the family only to that extent. An example of the effect of this rule is *McGuire v. McGuire*, 157 Neb. 226, 59 N.W.2d 336 (1953); although the husband was worth \$1,000,000 he was not obliged to provide his wife a home with indoor plumbing or a central heating system or to provide her with money for charitable contributions. See also Krauskopf, *supra* note 40, at 564-65.

⁵¹ The first amendment prohibits the establishment of religion by the state. The "penumbral" right of privacy protects the intramarital relationship. See, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Stanley v. Georgia*, 394 U.S. 557 (1969); *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

⁵² OHIO REV. CODE ANN. § 3103.04 (Page Supp. 1975).

⁵³ Norris, *supra* note 44, at 1035.

since 1893 the statutes of Ohio have placed the husband and wife, when divorced or separated, on equal footing in seeking the "care, custody and control" of children of the marriage;⁵⁴ the "tender years doctrine" that favored the mother as custodian of young children has never been controlling in Ohio.⁵⁵ Thus the concern is unfounded that § 3109.04 would change any presumptions; if the courts have in fact applied such a preference, it has been without statutory or binding case-law authority.⁵⁶

III. CREDIT

The use of credit has become a way of life in Ohio. Credit is the means to obtain housing, education, and transportation, to establish a business, and to achieve many other personal goals. It is well documented that women have frequently been excluded or hampered from participating fully in an economic system that depends upon credit.⁵⁷ The 111th General Assembly acted to deal with discrimination in credit by enacting House Bill 151.⁵⁸

The difficulties encountered by persons in obtaining and using credit have been the subject of intensive study, and the recognition of these problems has, on the federal level, resulted in the passage of the Equal Credit Opportunity Act.⁵⁹ The studies indicate that credit problems do exist for women, primarily those who are married, divorced, or widowed.⁶⁰ The major barriers are that: (1) women have more trouble obtaining credit and retaining credit with the same terms and conditions as men; (2) creditors are often unwilling to extend credit to married women in their own names; (3) creditors often discount a portion of a couple's income in considering a mortgage; and (4) the creation or revival of a credit identity is more difficult for divorced women and widows.

The central substantive provision of House Bill 151 prohibits discrimination in the granting, withholding, extending, or renewing of credit, or in the fixing of terms of any form of credit, on the basis

⁵⁴ OHIO REV. CODE ANN. § 3109.03 (Page 1972). The original provision is found at 90 Ohio Laws 186 (1893).

⁵⁵ See *Woodruff v. Woodruff*, 7 Ohio Misc. 87 (C.P. Miami Cty. 1965).

⁵⁶ See Norris, *supra* note 44, at 105.

⁵⁷ *Hearings Before the Joint Economic Committee of the Congress of the United States on the Economic Problems of Women*, 93rd Congress, 1st Sess. 191 (1973); GOVERNOR'S TASK FORCE ON CREDIT FOR WOMEN, SHE SUPPORTS HER CHILDREN (1974) [hereinafter cited as CREDIT TASK FORCE]; Comment, *Women and Credit*, 12 DUQ. L. REV. 863 (1974).

⁵⁸ Am. Sub. H.B. 151, 111th Gen. Ass'y, *codified at* OHIO REV. CODE ANN. §§ 4112.02-.05 (Page Supp. 1975).

⁵⁹ 15 U.S.C.A. § 1691-1691e (Supp. 1976).

⁶⁰ CREDIT TASK FORCE, *supra* note 57, at 13.

of race, color, religion, sex, marital status, national origin, or ancestry.⁶¹ This broad prohibition against discrimination applies to almost every type of credit transaction, since "creditor" is defined to include

any person who regularly extends, renews, or continues credit, any person who regularly arranges for the extension, renewal, or continuation of credit, or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit, whether or not any interest or finance charge is required.⁶²

In addition to the general prohibition against discrimination, the new law deals specifically with several problems delineated by the Credit Task Force. For instance, single females are sometimes asked to provide co-obligors when a male would not be so required.⁶³ One survey indicated that eighty-six percent of the commercial banks replying to the questionnaire asked fathers to co-sign for loans to unmarried daughters.⁶⁴ Although most of the retail institutions replying required that a wife supply financial information on her husband, only twenty-six percent required similar information of a husband concerning his wife.⁶⁵ Under Ohio law the imposition of special requirements or conditions, such as requiring co-obligors or reapplication because of the applicant's sex or a change in a person's marital status, is now prohibited.⁶⁶

Creditors have also discriminated against women by requiring that they obtain credit under their husband's surname, even though the wife may never have adopted the use of the name upon marriage.⁶⁷ House Bill 151 expressly states that it is discriminatory to "[r]efuse to grant credit to an individual in *any* name that individual customarily uses, if it has been determined in the normal course of business, that the creditor will grant credit to the individual."⁶⁸

The widespread practice of discounting a portion of a couple's income in a mortgage application because the wife may be of child-bearing age is also prohibited by House Bill 151. The creditor may not "[r]efuse to consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit to a married couple or either member thereof."⁶⁹ The statute also has

⁶¹ OHIO REV. CODE ANN. § 4112.021(B)(1)(a) (Page Supp. 1975).

⁶² *Id.* § 4112.021(A)(2).

⁶³ See CREDIT TASK FORCE, *supra* note 57, at 13.

⁶⁴ *Id.* at 38.

⁶⁵ *Id.* at 31.

⁶⁶ OHIO REV. CODE ANN. § 4112.021(B)(1)(e) (Page Supp. 1975).

⁶⁷ See *Hearings Before the Joint Economic Committee*, *supra* note 57, at 204; CREDIT TASK FORCE, *supra* note 57, at 13.

⁶⁸ OHIO REV. CODE ANN. § 4112.021(B)(1)(d) (Page Supp. 1975) (emphasis added).

⁶⁹ *Id.* § 4112.02(H)(6).

language that should prohibit the practice of discounting income in credit transactions other than mortgages, since it is a discriminatory practice to "[r]efuse to consider the sources of income of an applicant for credit, or disregard or ignore the income of an applicant, in whole or in part, on the basis of race, color, religion, sex, marital status, national origin, or ancestry."⁷⁰

This industry practice of discounting income is tied to the sex of the applicant, since the basis for discounting is that a woman *may* have a child. The impact of a working wife's ability to have a child on her ability to repay a loan has been exaggerated by the industry because of the unfounded assumptions that the wife's employment is temporary and that when she has a child she will discontinue her employment. These assumptions ignore the increasing employment of women and the tendency to return to work under liberalized maternity leave policies. Studies indicate that loans to families whose entire income is earned by the husband have a slightly higher delinquency rate than loans to families in which the husband's income is only a portion of the family income.⁷¹ In addition, a 35 year-old married woman entering the labor force after her last child will work an average of 24 more years.⁷²

Since credit is normally extended in the husband's name, and the wife's credit history is kept as a part of the husband's file rather than in a file of her own, one of the most severe credit problems for divorced women and widows is re-creating a credit identity once a man is no longer a part of the woman's credit picture. This problem is highlighted by Credit Task Force testimony of cases in which a woman's account with a credit card company was abruptly terminated due to her husband's death, even though bills had continued to be paid and the woman had qualified for credit in her own right.⁷³ Over ninety percent of the credit bureaus responding to a survey indicated that upon marriage a woman's credit history was put into a joint file; yet over sixty percent of the same institutions indicated that if a divorced woman applied for credit and did not have her own file, the credit bureau did not furnish an inquiring creditor with information in her husband's file.⁷⁴

The new law attacks these problems by providing that it is unlawful for a creditor to

⁷⁰ *Id.* § 4112.021(B)(1)(c).

⁷¹ L. KENDALL, *ANATOMY OF THE RESIDENTIAL MORTGAGE* (1964). For a discussion of this study, see *WOMEN AND CREDIT*, *supra* note 57, at 873.

⁷² UNITED STATES DEPARTMENT OF LABOR, *WOMEN'S BUREAU OF EMPLOYMENT STANDARDS, WORKING WOMEN 4* (rev. 1973).

⁷³ CREDIT TASK FORCE, *supra* note 57, at 15.

⁷⁴ *Id.* at 45.

[f]ail to refuse to print on each application for credit, in at least ten point type, the following notice: "IF YOU ARE MARRIED, you may apply for either joint or individual credit. You also have the right to request that the credit bureau maintain separate credit histories on you and your spouse."⁷⁵

It is also an unlawful discriminatory practice for a credit reporting agency to "[f]ail or refuse on the basis of race, color, religion, sex, marital status, national origin, or ancestry to maintain, upon the request of the individual, a separate file on each individual to whom credit is extended or about whom information is assembled or evaluated."⁷⁶ Consequently, if women take the time to require the credit bureau to separate their credit histories from those of their husband's, many of the problems of women who find themselves without a credit history upon widowhood or divorce will be alleviated.

IV. RAPE

For too long, emphasis has been placed on the actions of the rape victim rather than those of the rapist. Society has tended to label the victim as the one to blame because of her⁷⁷ supposed "improper behavior." As a consequence, women have been forced to take excessive precautions in conducting their daily activities. Despite such precautions, F.B.I. reports indicate an astounding increase in the number of forcible rapes both on and off the streets.⁷⁸ At the same time, less than fourteen percent of reported rape offenses⁷⁹ result in successful prosecutions.⁸⁰ One reason for this failure to convict is the inadequacy of existing laws and the strict evidentiary requirements.⁸¹

⁷⁵ OHIO REV. CODE ANN. § 4112.021(B)(1)(g) (Page Supp. 1975).

⁷⁶ *Id.* § 4112.021(b)(2)(a).

⁷⁷ The authors wish to take a realistic view of the fact that a majority of rape victims are women.

⁷⁸ F.B.I., UNIFORM CRIME REPORTS FOR THE UNITED STATES (1974 Preliminary Annual Release, March 31, 1975). Forcible rape increased nine percent in 1974.

⁷⁹ F.B.I. criminologists estimate that only one out of ten forcible rapes is even reported. *Id.*

⁸⁰ *Id.* at 15.

⁸¹ See 120 CONG. REC. H7460 (daily ed. July 31, 1974). Rep. Abzug remarked that: "No other group of victims are so often disbelieved as women who have been raped. During the 1960's, the incidence of reported rape rose over 65 percent, while in this period the number of convictions for rape rose only 36 percent. Indeed, only 13.3 percent of those men tried for rape were convicted in 1972, the lowest conviction rate for any violent crime. One reason convictions for rape are so low is the stringent corroborative evidence requirements. In the courtroom, the victim often must publicly testify as to her past sexual relationships. The offender does not have to testify at all since he cannot be forced to incriminate himself. Moreover, his past behavior and even prior rape convictions are not admissible as evidence."

However, Senate Bill 144,⁸² recently passed by the Ohio General Assembly, attempts to reverse this trend.

Major difficulties have evolved in the investigation, prosecution, and disposition of rape cases. Some of the more troublesome problems are that: (1) the psychological impact of the rape may make the victim reluctant to testify; (2) the publicizing of details of the trial tends to damage the reputation of the victim; (3) the reputation of the victim for other sexual activity can be attacked; (4) the victim must assume the costs of evidence-gathering for the state prosecution; (5) the victim must prove resistance; (6) no legal protection is available for legally separated spouses; (7) a minor who is a rape victim has no right to a medical examination without parental consent; and (8) the penalties for convicted rapists are unrealistic for today's society. The Ohio legislature has tried to remedy some of these problems.

To protect the victim's reputation, a new provision requires the court, upon request, to suppress the names of the victim and the offender, as well as the details of the alleged offense, until the preliminary hearing, arraignment, or the dismissal of the charge or other conclusion of the case, whichever occurs first.⁸³

The most extensive changes in the Ohio statute are those concerning rules of evidence. Historically, evidence of the victim's reputation for unchastity was admissible to impeach credibility *and* to show the probability of the victim's consent.⁸⁴ Application of these rules of evidence had the effect of placing the victim on trial rather than the offender.⁸⁵ In order to combat this, the evidentiary rules were amended to prohibit, in prosecutions for rape, the introduction of any type of evidence of the victim's past sexual activity in order to show probability of consent.⁸⁶ Exceptions were made for evidence pertaining to the origin of semen, pregnancy, or disease and evidence of the victim's past sexual activity with the offender. Evidence is admissible under these exceptions, however, only if the court, at a hearing in

⁸² Am. Sub. S.B. 144, amending OHIO REV. CODE ANN. §§ 2907.01, 2907.02, 2907.05, and 2951.02, enacting §§ 2907.10, 2907.11, 2907.12, 2907.28, and 2907.29 (Page Supp. 1975). It became effective Aug. 27, 1975, upon signature of the Governor. Two other states have enacted similar provisions. MICH. COMP. LAWS ANN. §§ 750.1-.568 (Supp. 1975); CAL. EVID. CODE ANN. §§ 782, 1103 (West Supp. 1975); CAL. GOV'T CODE ANN. § 13961.5 (West Supp. 1975); CAL. PENAL CODE ANN. §§ 1127d-27e (West Supp. 1975).

⁸³ OHIO REV. CODE ANN. § 2907.11 (Page Supp. 1975).

⁸⁴ See Note, *Rape Reform Legislation: Is It The Solution?*, 24 CLEVELAND ST. L. REV. 463, 478 (1975). Some respected legal authorities have suggested admitting evidence of prior specific acts. See, e.g., B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 156-57 (1921); 3 J. WIGMORE, *EVIDENCE* § 200 (3d ed. 1940).

⁸⁵ See Note, *Rape Reform Legislation*, *supra* note 84, at 488.

⁸⁶ OHIO REV. CODE ANN. § 2907.02(D) (Page Supp. 1975).

chambers, determines that such evidence is "material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value."⁸⁷ At this hearing, or any hearing or proceeding to decide the admissibility of evidence, the victim may be represented by independent counsel. In the case of indigency or inability to obtain counsel, the court may upon request appoint counsel without cost to the victim.⁸⁸ This provision is the first of its kind in the country, and it is a major step in providing due process for the rape victim.

The need to prove physical resistance by the victim is also eliminated by this statute.⁸⁹ This eliminates the confusion that results from trying to apply a resistance standard.

A feature unique to the crime of rape is that substantial evidence must be obtained by physical examination of the victim.⁹⁰ Although this evidence is used by the prosecution in its case, the costs of the examination have usually been borne by the victim. Ohio is one of four states⁹¹ that have enacted legislation under which the county or municipality (whichever has jurisdiction) must assume the costs of the evidence-gathering examination.⁹² The Ohio provision also requires that each reported victim be informed of other medical and psychiatric services.⁹³ Ohio is also unique in allowing a medical examination, even without prior parental consent, of a minor who is a victim of rape.⁹⁴

⁸⁷ *Id.*

⁸⁸ *Id.* § 2907.02(F).

⁸⁹ *Id.* § 2907.02(C).

⁹⁰ See Note, *Rape Reform Legislation*, *supra* note 84, at 494.

⁹¹ CAL. GOV'T CODE § 13961.5 (West Supp. 1975); ch. 374, § 11, [1975] Minn. Laws 1251: ch. 600, § 8, [1975] Nev. Laws 1131, 1133; OHIO REV. CODE ANN. § 2907.28 (Page Supp. 1975).

⁹² The home rule provision, OHIO CONST. art. XVIII, §§ 3, 7, may require the passage of an ordinance or bill of appropriations in order to have the costs of this examination shouldered by a political subdivision. If this is true, the state is without authority to force a municipality to bear the costs of this evidence-gathering examination. The home rule provision does not, however, impede the possibility of imposing the costs on counties.

Compensation for damages to a victim of rape may also be recoverable under the recently enacted Victim Compensation Act, H.B. 82, 111th Gen. Ass'y, 4 PAGE'S LEGISLATIVE BULL. 363 (1976). The Act provides for compensation by the state for specified economic losses to "physically injured" victims of criminal action. OHIO REV. CODE ANN. § 2743.51. The list of specified losses that are recoverable includes "reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care." *Id.* § 2743.51(F). This "award of reparations" is allowed only to the extent that compensation is not "readily available" from some other source (such as the county in the case of evidence-gathering expenses). *Id.* §§ 2743.51(B), 2743.60(D). The maximum sum recoverable under the Act is \$50,000. *Id.* § 2743.60(E).

⁹³ OHIO REV. CODE ANN. § 2907.29 (Page Supp. 1975).

⁹⁴ *Id.*

"Spouse" has been redefined by the Act to include one presently married to an offender at the time of the alleged offense except: (1) when parties have entered into a written separation agreement pursuant to § 3103.06 of the Revised Code; (2) during the pendency of an action for annulment, divorce, dissolution of marriage, or alimony; (3) in an action for alimony, after the effective date of judgment.⁹⁵ This definition affords legal protection for those who intend to terminate the marriage, without disturbing the viable, ongoing marital relationship.

Additionally, Ohio's new statute has added the offense of "sexual penetration." This is defined as the insertion by any person "without privilege to do so . . . [of] any instrument, apparatus, or other object into the vaginal or anal cavity of another, not the spouse of the offender" when the offender compels submission by force or threat of force, or when the offender prevents resistance by administering a drug or intoxicant by force, or threat of force, or when the other person is less than thirteen years of age.⁹⁶ One convicted is guilty of a first degree felony (punishable as first degree rape).⁹⁷ This provides legal protection against homosexual as well as heterosexual rape and thereby increases the equal protection of the laws as guaranteed by the fourteenth amendment.⁹⁸

Traditionally, sentences have been harsh for those convicted of rape, because of the mistaken belief that heavy penalties would deter future crimes.⁹⁹ Yet the harshness of the penalties has tended to make juries reluctant to convict.¹⁰⁰ Notwithstanding this tendency, the General Assembly has provided for a sentence of five years of incarceration for rape or felonious sexual penetration with a second or subsequent offense; if the victim is under 13 years of age, the incarceration for a second offender is extended to ten years.¹⁰¹ The statute further provides that one convicted of rape, whether for a first or subsequent offense, is not eligible for suspension of sentence, probation, or parole.¹⁰² If the crime is felonious sexual penetration of a victim under 13, life imprisonment is imposed even if it is a first offense.¹⁰³

The General Assembly should be commended for its rape reform

⁹⁵ *Id.* § 2907.01(L).

⁹⁶ *Id.* § 2907.12(A).

⁹⁷ *Id.* § 2907.12(B).

⁹⁸ See Comment, *Ohio's New Rape Law: Does It Protect Complainant at the Expense of the Rights of the Accused?*, 9 AKRON L. REV. 337, 341 (1975).

⁹⁹ Cf. *Furman v. Georgia*, 408 U.S. 238, 458-59 (1972) (Powell, J., dissenting).

¹⁰⁰ See Note, *Rape Reform Legislation*, *supra* note 84, at 491.

¹⁰¹ OHIO REV. CODE ANN. § 2907.10(A) (Page Supp. 1975).

¹⁰² *Id.* § 2907.12(B).

¹⁰³ *Id.* § 2907.10(B).

legislation. Certainly the changes are noteworthy and make Ohio a leader in providing due process and equal protection for the victim as well as the accused.

However, there are certain problems yet unsolved. Section 2907.02(D) does not restrict the right of either the victim or the defendant to introduce evidence to impeach credibility, although it disallows its introduction for the purpose of proving the substantive element of consent. Hence the defense can introduce evidence that is irrelevant to the issues of the case in order to attack the victim's credibility. In rape cases, this evidence may often be inflammatory and highly prejudicial.

In the area of medical examinations for minors who are rape victims, § 2907.28 does not require prior consent of the parents or guardian but does provide for notice to the parents after the examination has occurred. This may keep some minors away from the treatment they require.

In the area of sentencing and parole there are some unexplained inconsistencies. One who rapes a child with an object, even if it is a first offense, is automatically sentenced to life imprisonment, although there is the possibility of parole; on the other hand, one who rapes a child with his sex organ, regardless of the number of times, receives a nonprobation sentence of 10 years. An equitable re-examination of these penalties is in order.

Finally, further measures ought to be taken to prevent forcible rapes. Greater police protection should be made available in those areas with high incidents of rape offenses. The public must be instructed in the best means of preventing rapes and in various tactics of self-defense in order to discourage future crimes.

V. THE PROBATE REFORM ACT

Ohio probate law has recently undergone major and long-needed revisions. Initially there was considerable indecision about the form the revision should take. The Uniform Probate Code, promulgated in 1969, had many proponents and opponents.¹⁰⁴ During the 110th General Assembly, each house passed a reform bill, but neither became law because the conference committee failed to resolve the differences between the House and Senate versions.¹⁰⁵ The 111th Gen-

¹⁰⁴ For a discussion of the need for reform and of the positions of the Uniform Probate Code's proponents and opponents, see Kaufman, *Probate Reform: Old Dog, New Tricks*, 1 OHIO N.L. REV. 427 (1974).

¹⁰⁵ Six probate reform bills were introduced in the 110th General Assembly, four of which would have enacted the UNIFORM PROBATE CODE. Am. Sub. H.B. 996, a compromise bill, was enacted by both houses.

eral Assembly, building upon the work of its predecessors, enacted Senate Bill 145.¹⁰⁶ The Probate Reform Act simplified and expedited proceedings, facilitated administration, and brought the Code into conformity with the rules of civil and appellate procedure. Other changes in the Code emphasized the duties of the probate court and of fiduciaries. It gave the surviving spouse a larger share of the estate of the deceased intestate, eliminated the vestiges of distinctions between ancestral and nonancestral property, and eliminated many distinctions based upon sex.¹⁰⁷

The expansion of the "widow allowance" to a sex-neutral allowance for support was a major reform of the Act. Formerly, Revised Code § 2117.20 provided for an allowance to the widow and minor children sufficient for twelve months' support.¹⁰⁸ Every widow was entitled to this allowance irrespective of her personal resources. No widower was entitled to an allowance.¹⁰⁹ The allowance was available to children if it was necessary for their support, "taking into consideration the father's primary duty to care for his children."¹¹⁰ Therefore, the children of a female deceased could obtain an allowance only if the father was unable to support them for a year. Thus the sex of the deceased was a crucial factor in determining the availability of the allowance to the survivors.

When this provision was originally enacted,¹¹¹ very few women worked outside the home and employment opportunities were very limited. The death of the male breadwinner was a serious financial as well as personal hardship. Consequently, the assumption of the wife's dependency which underlies this section was appropriate. Due

¹⁰⁶ Am. Sub. S.B. 145, 111th Ohio Gen. Ass'y. The Governor signed the bill on August 29, 1975. It became effective in part on November 28, 1975 and in part on January 1, 1976.

¹⁰⁷ For a comprehensive analysis of the Act, see Robertson, *How the Family Fares: A Comparison of the Uniform Probate Code and the Ohio Probate Reform Act*, 37 OHIO ST. L.J. 321 (1976); OHIO LEGAL CENTER INSTITUTE, REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION PROGRAM, vol. 96 (1975).

¹⁰⁸ Former OHIO REV. CODE ANN. § 2117.20 (Page 1972). For a discussion of the history of this section's predecessors, see *In re Estate of Hinton*, 64 Ohio St. 485, 60 N.E. 621 (1901).

¹⁰⁹ Although former OHIO REVISED CODE ANN. § 1.10 (Page 1969) provided that words of the masculine gender include the feminine gender, the court in *State ex rel. Bott v. Petro*, 13 Ohio Op. 2d 360, 161 N.E.2d 428 (C.P. Cuyahoga Cty. 1959) held that the converse was not true and declined to extend widow's benefits to a widower. Section 1.10 was recently replaced by OHIO REV. CODE ANN. § 1.43 (Page Supp. 1975) which states: "Words of one gender include the other genders."

¹¹⁰ The addition of this condition changed the prior law, which permitted all children of the deceased to obtain the allowance. *In re Estate of Hinton*, 64 Ohio St. 485, 60 N.E. 621 (1901). The "father's primary duty" is derived from OHIO REV. CODE ANN. § 3103.03 (Page Supp. 1975).

¹¹¹ The widow allowance was originally instituted in 1840. See *In re Estate of Hinton*, 64 Ohio St. 485, 60 N.E. 621 (1901).

to the changing circumstances of the past century and a half, however, opportunities for women have become more available and the rationale behind this distinction is no longer compelling.¹¹² The existence of insurance, pensions, and trusts—none of which are subject to probate—has also helped to alleviate the hardship.¹¹³

The legislature eliminated the sex bias of the widow's allowance by making a similar allowance available to all surviving spouses and children.¹¹⁴ This allowance is not conditioned on financial need nor on the sex of the deceased or the surviving spouse. It is now called an "allowance for support" and the amount is set at \$5000 rather than 12 months' support. Six other sections of the Code were amended to reflect the new sex-neutral name of this allowance.¹¹⁵

The revisions in the inheritance laws of intestate succession are relevant to this article because women have been greatly disadvantaged by the failure under prior law to recognize the contributions of the surviving spouse to the decedent's accumulation of wealth during his lifetime.¹¹⁶ The Probate Reform Act increases the elective share of the surviving spouse. If there are no surviving children, or their lineal descendants, the spouse receives the entire estate;¹¹⁷ under prior law the spouse obtained only three-fourths of this amount. If there is only one surviving child, the spouse receives the first \$30,000 (or \$10,000 if the spouse is not the natural or adoptive parent), plus one-half of the remainder of the estate.¹¹⁸ If there is more than one surviving child, the spouse receives the first \$30,000 (or \$10,000) plus one-third of the remainder of the estate.¹¹⁹ The initial \$10,000 or \$30,000 allotment to the spouse when there are surviving children did not exist under the old statute of descent and distribution.

Another impediment to spousal inheritance, the "half and half"

¹¹² Today approximately one-half of all married women work. The passage of the Civil Rights Act prohibiting sex discrimination in employment has expanded the opportunities available. See section I *supra*.

¹¹³ See Hoffheimer, *Release from Administration Allowances*, OHIO LEGAL CENTER INSTITUTE REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION PROGRAM, vol. 96 (1975).

¹¹⁴ OHIO REV. CODE ANN. § 2117.20 (Page Supp. 1975). This revision is similar to the approach of UNIFORM PROBATE CODE §§ 2-402, 2-404. It is also consistent with the recommendations of the Ohio ERA Task Force. TASK FORCE REPORT, *supra* note 6, at 36.

¹¹⁵ OHIO REV. CODE ANN. §§ 2107.42, 2127.02, 2127.03, 2127.31, 4731.37, 5731.15 (Page Supp. 1975).

¹¹⁶ For a discussion of the tradition of ignoring this contribution, see Warren, *The Husband's Right to Wife's Services*, 38 HARV. L. REV. 421 (1925); Krauskopf and Thomas, *Partnership Marriage: The Solution to an Ineffective and Inequitable Law of Support*, 35 OHIO ST. L.J. 558, 580-84 (1974).

¹¹⁷ OHIO REV. CODE ANN. § 2105.06(D) (Page Supp. 1975).

¹¹⁸ *Id.* § 2105.06(B).

¹¹⁹ *Id.* § 2105.06(C).

statute,¹²⁰ was repealed by the Probate Reform Act. This statute was a lingering vestige of the distinction between ancestral and nonancestral property. As one commentator has explained, the statute generally provided that:

(1) If the decedent was the survivor of a first marriage and his or her first spouse died leaving children, and the surviving spouse of the first marriage received real or personal property from the first spouse by deed of gift, devise, bequest, descent or election, and (2) if the surviving spouse of the first marriage subsequently remarried, and later dies intestate without issue, at the time of his or her death possessing real or personal property identical to that received from his or her first deceased spouse, (3) the "half and half" statute provides that under these circumstances only one-half of such identical real or personal property shall pass to and vest in the surviving spouse of the second marriage, the other one-half to pass and vest in the children of the first spouse from whom such property came, or their lineal descendants *per stirpes*.¹²¹

The "half and half" statute was originally designed to keep certain property within the family of the deceased, and had been considered an archaic provision for some time.¹²²

The bill also facilitated the inheritance of surviving spouses by removing the requirement of an executor's bond when the spouse is the sole heir,¹²³ and by facilitating the purchase of the mansion house¹²⁴ and transfer of the title of one car owned by the deceased.¹²⁵

Also eliminated from the code by the bill were all references to bastards and bastardy proceedings. These terms were supplanted by the terms "out of wedlock" children and "paternity proceedings," respectively.¹²⁶ This revision was designed to remove some of the stigma that had formerly fallen disproportionately hard on the mother and child. The bill also made it easier for a natural father to establish a legal parental relationship with a child born out of wedlock, by eliminating the requirement that a father who marries the mother before or after the birth of a child out of wedlock must

¹²⁰ Former OHIO REV. CODE ANN. § 2105.10 (Page 1968). For further discussion of this statute, see White, *Ohio's "Half and Half" Inheritance Statute*, 15 U. CIN. L. REV. 401 (1941).

¹²¹ Kaufman, *supra* note 104, at 438.

¹²² In 1932 a Probate Code Commission recommended its elimination. On numerous occasions since that time attempts have been made to repeal this section. OHIO REV. CODE ANN. § 2105.01 (Page 1968), enacted in 1932, eliminated the distinction between ancestral and nonancestral property.

¹²³ OHIO REV. CODE ANN. § 2109.07 (Page Supp. 1975).

¹²⁴ *Id.* § 2105.062.

¹²⁵ *Id.* § 2113.532.

¹²⁶ OHIO REV. CODE ANN. §§ 1907.181, 2105.17, 2105.18, 2301.03, 3107.06, 3111.01, 3111.16, 3111.17, 3111.20 (Page Supp. 1975).

formally acknowledge the child to legitimize it; now marriage of the parents alone is sufficient.¹²⁷ Although these revisions somewhat soften the impact of the sex-discriminatory illegitimacy laws, which base legal parental relationship on the sex of the parent, they are but a beginning of the reform needed in this area.¹²⁸

VI. MISCELLANEOUS CHANGES

A. *Library Board*

Prior to recent amendment, Revised Code § 3375.12 made the following impermissible distinction on the basis of sex:

[T]he erection and equipment and the custody, control, and administration of free public libraries established by municipal corporations shall be vested in a board of library trustees composed of six members, not more than three of whom shall belong to the same political party and not more than three of whom shall be women.¹²⁹

Since this provision does not place a parallel restriction on male membership, the Ohio Task Force recommended that it be amended to delete the stipulation that not more than three members of the board could be women. This recommendation was accomplished by the passage of House Bill 796,¹³⁰ in which the only provision was the deletion of the objectionable phrase.

¹²⁷ A legitimized child has the same legal relationship to the father as a child born during a marriage.

¹²⁸ Historically, the purpose of the concept of illegitimacy was to discourage illicit sexual relations by making the offspring of such relations socially and legally disfavored. The concept is discriminatory, because the legal treatment of parent-child relationships is based solely on the sex of the parent. The rights and duties running between the father and the illegitimate child are substantially less than those between the mother and the child. Under present law, a child born out of wedlock has no rights of inheritance against the father's estate, although § 2105.17 does give the child such rights against the mother's estate. Under § 3111.17, the out-of-wedlock child has no right to support from the father unless a successful paternity proceeding has been brought. The mother's duty to support is automatic. The father of the child has very limited parental rights with respect to his child, while the mother's rights are total.

The concept of illegitimacy is particularly offensive because it ignores the most important factor: parentage. Instead of focusing on paternity and maternity, parentage looks beyond the legal constructs of marriage and acknowledgment. A child can only be legitimate if the child bears a prescribed relationship with the father, in addition to the blood-relationship. OHIO REV. CODE ANN. § 2105.18 (Page Supp. 1975). Children are never deemed "illegitimate" based on their relationship to the mother. Further, only the father holds the power to legitimate a child; the establishment of paternity for the purpose of determining the duty of support does not have the legal effect of legitimating the child. *See generally* OHIO REV. CODE ANN. ch. 3111 (Page 1972), *as amended*, (Page Supp. 1975). *See also* TASK FORCE REPORT, *supra* note 6, at 15. The Uniform Parentage Act (1973) could serve as a model in eliminating many of the objectionable provisions.

¹²⁹ Former OHIO REV. CODE ANN. § 3375.12 (Page 1972).

¹³⁰ H.B. 796, 111th Ohio Gen. Ass'y, 1 PAGE'S LEGISLATIVE BULL. 16 (1976).

B. *Equalization of Youth Commitment*

One of the obvious examples of sex discrimination was found in § 5139.05 of the Revised Code,¹³¹ in which a distinction was made on the basis of sex in the age at which the Ohio Youth Commission took jurisdiction over a juvenile. The Commission was authorized to take permanent custody of delinquent males between the ages of 10 and 21 and of females between 12 and 21. The Task Force recommended that this section be amended so that both boys and girls may be committed to the Ohio Youth Commission at age 12. This recommendation was put into effect by the enactment of House Bill 839.¹³²

C. *Insurance*

Senate Bill 425¹³³ has amended the Ohio law of unfair and deceptive insurance practices¹³⁴ to prohibit sex discrimination in insurance. The bill was signed on June 1, 1976, and became effective August 31, 1976.

The problems of sex discrimination in insurance can be classified into four major areas: (1) unequal availability of insurance coverage, (2) unequal policy terms, (3) unfair rating, and (4) unfair underwriting practices. Senate Bill 425 deals with each of these problem areas in amending the Unfair and Deceptive Practices Act. It includes the following as unfair and deceptive practices: refusing to issue, cancelling, or declining to renew any insurance policy because of marital status or sex; making or permitting any unfair discrimination between individuals of the same class and essentially the same hazard in rates, benefits, underwriting standards, or any term or condition of any insurance policy other than life; refusing to make available disability income insurance solely because the applicant's principal occupation is that of managing a household; and refusing, when offering maternity benefits, to make those benefits available to the policyholder for all individuals covered under any comparable policy to be issued, including family members if the policy otherwise provides coverage for family members.¹³⁵

VII. CONCLUSION

The changes that have occurred in Ohio law are significant, particularly in the areas of employment, divorce, credit, probate, and

¹³¹ Former OHIO REV. CODE ANN. § 5139.05 (Page 1970).

¹³² H.B. 839, 111th Ohio Gen. Ass'y.

¹³³ Am. Sub. S.B. 425, 111th Ohio Gen. Ass'y, 4 PAGE'S LEGISLATIVE BULL. 283 (1976).

¹³⁴ OHIO REV. CODE ANN. §§ 3901.19-.25 (1971).

¹³⁵ *Id.* § 3901.19(L)-(O), 4 PAGE'S LEGISLATIVE BULL. 283 (1976).

rape. However, there is still much to be done to achieve equality for the citizens of Ohio. Over one hundred sections of the Ohio Revised Code still contain blatant gender preferences. Among the rights affected by these sections are choice of occupation and voting. Ohio citizens are also affected by the inequitable gender-linked laws of other states and the federal government, which are beyond the control of their own General Assembly. Although the changes in the status of women will probably continue in our rapidly changing society, only a national Equal Rights Amendment can ensure that the changes will be consistent and permanent.